

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1338

Introduced by Senator Kehoe

(Principal coauthor: Senator Steinberg)

(Principal coauthors: Assembly Members Atkins, John A. Pérez, and Skinner)

(Coauthors: Senators Alquist, De León, DeSaulnier, Evans, Hancock, Leno, Lieu, Liu, and Wolk)

(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Butler, Lara, and Williams)

February 24, 2012

An act to amend, *repeal*, and *add* Section 2253 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1338, as amended, Kehoe. Abortion.

Existing law makes it a public offense, punishable by a fine not exceeding \$10,000 or imprisonment, or both, for a person to perform or assist in performing a surgical abortion if the person does not have a valid license to practice as a physician and surgeon, or to assist in performing a surgical abortion without a valid license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion. Existing law also makes it a public offense, punishable by a fine not exceeding \$10,000 or imprisonment, or both, for a person to perform or assist in performing a nonsurgical abortion if the person does not have a valid license to practice as a physician and surgeon or does not have a valid license or certificate obtained in accordance with

some other provision of law authorizing him or her to perform or assist in performing the functions necessary for a nonsurgical abortion. Under existing law, nonsurgical abortion includes termination of pregnancy through the use of pharmacological agents.

Existing law, the Nursing Practice Act, provides for the licensure and regulation of registered nurses, including nurse practitioners and certified nurse-midwives, by the Board of Registered Nursing. Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California.

This bill would make it a public offense, punishable by a fine not exceeding \$10,000 or imprisonment, or both, for a person to perform ~~or assist in performing~~ an abortion if the person does not have a valid license to practice as a physician and surgeon, or to assist in performing an abortion without a valid license or certificate obtained in accordance with ~~some other provision of law authorizing him or her to perform the functions necessary to assist in performing an abortion, except as specified.~~ The bill would also make it a public offense, punishable by a fine not exceeding \$10,000 or imprisonment, or both, for a person to perform ~~or assist in performing~~ an abortion by medication or aspiration techniques without a valid license to practice as a physician and surgeon or without a license or certificate ~~obtained in accordance with some other provision of law, including, but not limited to, the Nursing Practice Act or the Physician Assistant Practice Act,~~ to practice as a nurse practitioner, a certified nurse-midwife, or a physician assistant authorizing him or her to perform ~~or assist in performing~~ the functions necessary for an abortion by medication or aspiration techniques. *The bill would also, until January 1, 2015, require a nurse practitioner, certified nurse-midwife, or physician assistant to complete specified training in order to perform an abortion by aspiration techniques, but would indefinitely authorize a nurse practitioner, certified nurse-midwife, or physician assistant who completed a specified training program and achieved clinical competency to continue to perform abortions by aspiration techniques.* The bill would delete the description of what a nonsurgical abortion includes. ~~The bill and~~ would make other technical, nonsubstantive changes.

Because the bill would change the definition of crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2253 of the Business and Professions
2 Code is amended to read:

3 2253. (a) Failure to comply with the Reproductive Privacy
4 Act (Article 2.5 (commencing with Section 123460) of Chapter 2
5 of Part 2 of Division 106 of the Health and Safety Code) in
6 performing, assisting, procuring or aiding, abetting, attempting,
7 agreeing, or offering to procure an illegal abortion constitutes
8 unprofessional conduct.

9 (b) (1) Except as provided in paragraph (2), a person is subject
10 to Section 2052 if he or she performs ~~or assists in performing~~ an
11 abortion, and at the time of so doing, does not have a valid,
12 unrevoked, and unsuspended license to practice as a physician and
13 surgeon as provided in this chapter, or if he or she assists in
14 performing an abortion and does not have a valid, unrevoked, and
15 unsuspended license or certificate obtained in accordance with
16 ~~some other provision of law that authorizes him or her to perform~~
17 the functions necessary to assist in performing an abortion.

18 (2) A person is subject to Section 2052 if he or she performs ~~or~~
19 ~~assists in performing~~ an abortion by medication or aspiration
20 techniques, and at the time of so doing, does not have a valid,
21 unrevoked, and unsuspended license to practice as a physician and
22 surgeon as provided in this chapter, or does not have a valid,
23 unrevoked, and unsuspended license or certificate ~~obtained in~~
24 ~~accordance with some other provision of law, including, but not~~
25 ~~limited to, the Nursing Practice Act (Chapter 6 (commencing with~~
26 ~~Section 2700)) or the Physician Assistant Practice Act (Chapter~~
27 ~~7.7 (commencing with Section 3500)), to practice as a nurse~~
28 ~~practitioner, a certified nurse-midwife, or a physician assistant~~
29 that authorizes him or her to perform ~~or assist in performing~~ the

1 functions necessary for an abortion by medication or aspiration
2 techniques, *subject to subdivision (c).*

3 *(c) For purposes of paragraph (2) of subdivision (b), both of*
4 *the following shall apply:*

5 *(1) In order to perform an abortion by aspiration techniques,*
6 *a person with a license or certificate to practice as a nurse*
7 *practitioner or a certified nurse-midwife shall complete training*
8 *recognized by the Board of Registered Nursing. The training*
9 *protocols established by Health Care Workforce Pilot Project*
10 *(HWPP) No. 171 through the Office of Statewide Health Planning*
11 *and Development shall be considered as recognized by the board*
12 *and deemed to satisfy this requirement. A nurse practitioner or*
13 *certified nurse-midwife who has completed training and achieved*
14 *clinical competency through HWPP No. 171 shall be authorized*
15 *to continue to perform abortions by aspiration techniques.*

16 *(2) In order to receive authority from his or her supervising*
17 *physician and surgeon to perform an abortion by aspiration*
18 *techniques, a physician assistant shall complete training either*
19 *through training programs approved by the Physician Assistant*
20 *Committee pursuant to Section 3513 or by training to perform*
21 *medical services which augment his or her current areas of*
22 *competency pursuant to Section 1399.543 of Title 16 of the*
23 *California Code of Regulations. The training protocols established*
24 *by HWPP No. 171 shall be deemed to meet the standards of the*
25 *Physician Assistant Committee. A physician assistant who has*
26 *completed training and achieved clinical competency through*
27 *HWPP No. 171 shall be authorized to continue to perform*
28 *abortions by aspiration techniques.*

29 *(d) This section shall remain in effect only until January 1, 2015,*
30 *and as of that date is repealed, unless a later enacted statute, that*
31 *is enacted before January 1, 2015, deletes or extends that date.*

32 *SEC. 2. Section 2253 is added to the Business and Professions*
33 *Code, to read:*

34 *2253. (a) Failure to comply with the Reproductive Privacy*
35 *Act (Article 2.5 (commencing with Section 123460) of Chapter 2*
36 *of Part 2 of Division 106 of the Health and Safety Code) in*
37 *performing, assisting, procuring or aiding, abetting, attempting,*
38 *agreeing, or offering to procure an illegal abortion constitutes*
39 *unprofessional conduct.*

1 **(b) (1)** *Except as provided in paragraph (2), a person is subject*
2 *to Section 2052 if he or she performs an abortion, and at the time*
3 *of so doing, does not have a valid, unrevoked, and unsuspended*
4 *license to practice as a physician and surgeon as provided in this*
5 *chapter, or if he or she assists in performing an abortion and does*
6 *not have a valid, unrevoked, and unsuspended license or certificate*
7 *obtained in accordance with law that authorizes him or her to*
8 *perform the functions necessary to assist in performing an abortion.*

9 **(2)** *A person is subject to Section 2052 if he or she performs an*
10 *abortion by medication or aspiration techniques, and at the time*
11 *of so doing, does not have a valid, unrevoked, and unsuspended*
12 *license to practice as a physician and surgeon as provided in this*
13 *chapter, or does not have a valid, unrevoked, and unsuspended*
14 *license or certificate to practice as a nurse practitioner, a certified*
15 *nurse-midwife, or a physician assistant that authorizes him or her*
16 *to perform the functions necessary for an abortion by medication*
17 *or aspiration techniques. A nurse practitioner, certified*
18 *nurse-midwife, or physician assistant who has completed training*
19 *and achieved clinical competency through Health Care Workforce*
20 *Pilot Project (HWPP) No. 171 through the Office of Statewide*
21 *Health Planning and Development shall be authorized to continue*
22 *to perform abortions by aspiration techniques.*

23 **(c)** *This section shall become operative on January 1, 2015.*

24 ~~SEC. 2.~~

25 **SEC. 3.** *No reimbursement is required by this act pursuant to*
26 *Section 6 of Article XIII B of the California Constitution because*
27 *the only costs that may be incurred by a local agency or school*
28 *district will be incurred because this act creates a new crime or*
29 *infraction, eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section 17556 of*
31 *the Government Code, or changes the definition of a crime within*
32 *the meaning of Section 6 of Article XIII B of the California*
33 *Constitution.*